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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,542	03/29/2002	Victor Johannes Nickolson	2000.551US	4736

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INTERVET INC
405 STATE STREET
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EXAMINER

KWON, BRIAN YONG S

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 06/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,542

Applicant(s)

NICKOLSON, VICTOR JOHANNES

Examiner

Brian S Kwon

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1614

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35

U.S.C. 119(a)-(d). It is noted, however, that applicant has not filed a certified copy of the EP

00201239.1 application filed April 5, 2000 as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

Art Unit: 1614

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-3 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange et al. (DRUGS UNDER EXPERIMENTAL AND CLINICAL RESEARCH, 1995, 21 (3) 89-96) in view of Olsen et al. (WO 9819674).

Lange teaches or suggests the use of non-steroidal anti-inflammatory drug such as ketoprofen, ibuprofen and naproxen for the treatment of tension-type headache.

Olsen teaches or suggests the use of mirtazapine for the treatment of tension type headache (page 32, lines 7-13).

The teaching of Lange differs from the claimed invention in the combination use of non-steroidal anti-inflammatory drug (e.g., ketoprofen, ibuprofen, naproxen) and mirtazapine in a composition (claims 1-3) or a patient pack (claims 12-13) and in the treatment of headache (claims 9-11), namely tension-type headache. Furthermore, the reference differs from the claimed invention in the specific amount of mirtazapine in a composition or a patient pack (claims 10, 13 and 15). To incorporate such teaching into the teaching of Lange, would have been obvious in view of Olsen who teaches or suggests the use of mirtazapine in the treatment of tension type headache. Above references in combination make clear that non-steroidal anti-inflammatory drug (e.g., ibuprofen, ketoprofen, naproxen) have been individually used for the treatment of headache, namely tension headache. It is obvious to combine two compositions each of which is taught by prior art to be useful for same purpose; idea of combining them flows logically from their having been individually taught in the prior art. The combination of active

Art Unit: 1614

ingredient with the same character is merely the additive effect of each individual component.

See In re Kerkhoven, 205 USPQ 1069 (CCPA 1980).

With respect to the claimed patient pack in claims 12-13 and the specific amount of mirtazapine in a composition or a patient pack in claims 10, 13 and 15, those of ordinary skill in the art will readily arrive at the claimed patient pack comprising the combination of NSAIDs and mirtazapine from the aforementioned combination composition and also readily optimize effective dosages and concurrent administration dosage form as determined by good medical practice and the clinical condition of the individual patient. Optimization of known active and/or inactive ingredient in a composition is well considered within the skill of the artisan, absent evidence to the contrary.

Conclusion

3. No Claim is allowed.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (703)308-5377. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax number for this Group is (703) 308-4556.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Application/Control Number: 10/089,542

Page 5

Art Unit: 1614

Brian Kwon

**ZOHREH FAY
PRIMARY EXAMINER
GROUP 1600**

A handwritten signature in cursive script, appearing to read "Zohreh Fay", written in black ink.